

**Balzer and Associates, Inc. Standard Terms and Conditions(1/31/15)****1. Definitions.**

- a. **“Agreement”** means the Proposal, Agreement, these Terms and Conditions and any addenda, amendments supplementary instructions and changes to the scope of services as may occur from time to time.
- b. **“Balzer”** means Balzer and Associates, Inc., a Virginia corporation.
- c. **“Client”** means the entity for which the services are being performed as referenced in the Agreement.
- d. **“Excluded Services”** means any services not specified in the Scope of Services.
- e. **“Project”** means the project to be completed by Balzer as defined in the Proposal and Agreement.

**2. Billing and Payment.**

- a. **Monthly Invoices.** Each month during the Term, Balzer shall send the Client an invoice for services performed under this Agreement during the preceding month. All billings from Balzer to the Client are correct and binding on the Client, unless the Client notifies Balzer within ten days in writing of any alleged inaccuracies or errors in billing.
- b. **Payment.** The Client shall pay its monthly invoice to Balzer within 30 days of Balzer’s invoice date. Unless otherwise agreed to in writing, all payments shall be made by check, drawn to the order of Balzer and Associates, Inc. (or its designated entity) and delivered to P.O Box 4068, Roanoke, VA 24015.
- c. **Past Due Payment Interest.** If the Client has not paid Balzer within 30 days of Balzer’s invoice date, Balzer shall impose interest upon the Client’s unpaid balance at an interest rate of 1.5% per month (**“Monthly Late Payment Charge”**). Client shall pay to Balzer the Monthly Late Payment Charge in addition to Client’s outstanding principal amount until the Project Fee is satisfied.
- d. **Action for Non-Payment.** If the Client fails to pay any amount of principal, interest, or other sum payable under this Agreement within 90 days of Balzer’s invoice date, Balzer may bring legal action against Client to collect fees for services rendered. Should Balzer elect to hire an attorney and commence legal proceedings in order to collect the Client’s outstanding debt, the Client shall pay all costs incurred by Balzer (including attorney’s fees, investigation costs, and filing fees). Additionally, Balzer may terminate or suspend its performance under this Agreement for non-payment in accordance with Section 19(a)

**3. Balzer’s Responsibilities.**

- a. **Services.** Balzer shall provide the professional services necessary to complete the Project as set forth in this Agreement.
- b. **Standard of Care.** Balzer shall perform its services consistent with the professional skill and care ordinarily provided by professionals practicing

in the same or similar locality under the same or similar circumstances. Balzer shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

- c. **No Conflict of Interest.** Except with the Client's knowledge and consent, Balzer shall not engage in any activity or accept any employment, interest, or contribution that would definitively compromise Balzer's professional judgment with respect to this Project.
- II. **Client's Responsibilities.** To ensure the completion of the Project, the Client shall
- a. designate in writing a person to act as the Client's representative who shall have complete authority to transmit instructions and receive information with respect to Balzer's services;
  - b. provide full information about the objectives, schedule, and constraints of the project such that Balzer may rely on the accuracy and completeness of information furnished by the Client;
  - c. establish a budget with reasonable contingencies that meet Project requirements;
  - d. give prompt written notice to Balzer whenever the Client observes or otherwise becomes aware of any development that affects the scope or timing of the Project, or any defect or nonconformance in the work of any Project contractor; and
  - e. pay any costs associated with any modifications, redesigns, or repairs required because of any unanticipated, unexpected, or unforeseen conditions uncovered during the Term.
4. **Modification.** Balzer and Associates, Inc. ("**Balzer**") may update or modify these Terms and Conditions at any time without prior notice.
5. **Governing Terms.** All services offered by Balzer are provided subject to the terms and conditions stated herein. These Terms and Conditions shall apply to the delivery of services described in any proposal, agreement, sales order, invoice, or other contract documentation (collectively, "**Agreement**" or "**Agreements**") to which these Terms and Conditions are attached or incorporated by reference. Similarly, any defined term used herein without a contextual definition will have the same meaning as that which is assigned to it in the Agreement to which these Terms and Conditions are attached. Except as expressly agreed by an authorized representative of Balzer in writing, no other terms and conditions, including any terms and conditions attached to, or contained within, a Client's request for quotation, acknowledgment, purchase order, or other contract documentation shall apply. The Client's acceptance of the services provided by Balzer shall constitute the Client's affirmation that the terms and conditions set forth herein govern the purchase, sale, delivery, and performance of all Balzer services. THE TERMS OF THIS CONTRACT SHALL SUPERSEDE ANY ADDITIONAL, DIFFERENT, OR CONFLICTING TERMS PROPOSED BY THE CLIENT OR CONTAINED ON ANY DOCUMENT OR INSTRUMENT SUBMITTED BY THE CLIENT.
6. **Indemnification.** The Client shall indemnify and hold Balzer, its directors, officers, agents, employees, and assigns (collectively, "**Design Professionals**")

harmless for, from, and against any and all claims, losses, expenses, damages, obligations, deficiencies, or liabilities (including costs of investigation, interest, penalties, reasonable attorney's fees) and any and all costs, expenses, and fees incident to any suit, action or proceeding, brought by a third party and incurred or sustained by Balzer as a result of the Client's action or omissions arising out of liabilities or obligations (including liabilities for breach of contract or liabilities arising in tort).

- a. **Notice of Claim.** If any claim is made as a result of which any Design Professional is entitled to indemnification by the Client, Balzer shall notify the Client in writing within ten business days of learning of such claim.
  - b. **Defense Against Claim.** After receiving notice of a claim, Client shall, at no expense to Balzer, assume the defense of such claim with counsel reasonably satisfactory to Balzer.
  - c. **Separate Legal Counsel.** Balzer may employ separate counsel and participate in the defense of any claim. The Client shall bear the reasonable fees, costs, and expenses of such separate counsel, if
    - i. the use of the counsel chosen by the Client to represent Balzer would present such counsel with a conflict of interest, and
    - ii. in Balzer's reasonable judgment, the Client has not employed satisfactory counsel to represent Balzer within a reasonable time after giving notice of a claim.
7. **Dispute Resolution.** Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligation under the Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to the Agreement by direct negotiation. Should direct negotiation fail as a means by which to resolve a dispute, Balzer may commence any legal action it deems necessary (including, but not limited to, mediation or litigation), to compel the Client's compliance with its obligations under the Agreement.
8. **Intellectual Property.** In transmitting any intellectual property including patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and registration of such worldwide, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, and other intangible proprietary information ("**Instruments of Service**"), or any other information not listed herein, the transmitting party is the owner of such information or has permission from the owner to transmit such information for its use on the Project that is the subject of this Agreement. If the Client and Balzer intend to transmit Instruments of Service or any other information or documentation in digital form, Section 8 of these Terms and Conditions shall govern such transmission.
- a. **Ownership Rights.** Balzer and its Design Professionals shall be the authors and owners of their respective Instruments of Service, and shall retain all common law, statutory, and other reserved rights (including copyrights, patents, trademarks, or trade secret protection). Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not

to be construed as publication in derogation of the reserved rights of Balzer and its Design Professionals.

- b. **Grant of Non-Exclusive License.** Upon execution of the Agreement governed by these terms and conditions, Balzer grants to the Client a nonexclusive license to use Balzer's Instruments of Service solely and exclusively for purposes of designing, constructing, using, maintaining, altering, adding to, or otherwise completing the Project, provided that the Client substantially performs its obligations (including prompt payment of all sums when due) under the Agreement. Balzer shall obtain similar nonexclusive licenses from the Design Professionals consistent with this Agreement. The license granted under this Section 8(b) permits the Client to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Client's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. If Balzer rightfully terminates the Agreement for cause, the license granted in this Section 8(b) shall terminate.
  - c. **Indemnification for Improper Use of the Instruments of Service.** In the event the Client uses the Instruments of Service without retaining the author of the Instruments of Service, the Client shall release Balzer and its Design Professionals from all claims and causes of action arising from such uses. The Client, to the extent permitted by law, shall indemnify and hold harmless Balzer and its Design Professionals from all costs, losses, expenses, damages, obligations, deficiencies, or liabilities (including costs of investigation, interest, penalties, reasonable attorney's fees), related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Client's use of the Instruments of Service under this Section 8.
  - d. **Limited License; License Non-Transferable.** Except for the licenses granted in this Section and for the Project, no other license or right shall be deemed granted or implied under the Agreement. The Client shall not assign, delegate, sublicense, pledge, or otherwise transfer any license granted herein to another party without Balzer's prior written agreement. Any unauthorized use of the Instruments of Service shall be at the Client's sole risk and without liability to Balzer or its Design Professionals.
9. **Digital Data.** The parties shall comply with the following protocols regarding the use, modification, and transmission of any Instruments of Service or other information, communication, drawings, or designs created or stored for the Project in digital form ("**Digital Data**").
- a. **Transmitting Party Warranty.** The transmission of Digital Data constitutes a warranty by the transmitting party to the receiving party that the transmitting party
    - i. is the owner of the Digital Data;
    - ii. has the permission from the owner to transmit Digital Data for its use on the Project; or
    - iii. is authorized to transmit any Digital Data that the transmitting party

has designated as confidential and marked with an indication such as “Confidential” or “Business Proprietary” (“**Confidential Information**”).

- b. **Receiving Party Confidentiality.** The receiving party shall keep Confidential Information strictly confidential and shall not disclose it to any other person or entity except
  - iv. its employees;
  - v. its consultants and contractors whose contracts include similar restrictions on the use of Confidential Information; or
  - vi. those who need to know the Confidential Information to perform services solely and exclusively for the Project.
- c. **No Conveyance of Rights.** The transmitting party does not convey any right in the Digital Data or in the software used to generate the data. The receiving party may not use the Digital Data unless permission to do otherwise is provided in the Agreement, in other documents incorporated by reference into the Agreement, or in a separate license.
- d. **Use of Digital Data.** Unless otherwise granted in a separate license, the receiving party’s use, modification, or transmission of the Digital Data is specifically limited to the sole and exclusive purpose of designing, constructing, using, maintaining, altering, adding to, or otherwise completing the Project.
- e. **Electronic Recordkeeping.** Whether transmitted to the Client or not, Balzer shall retain ownership of all original tapes, disks, hard drives, flash drives, USB drives, records, CD’s, and other forms of electronic data and data storage, as well as all hard copy originals of any Project documentation delivered to the Client as Digital Data. Balzer may remove from copies provided to the Client all identification reflecting the involvement of Balzer in the preparation of those materials.
  - vii. **Originals Govern.** In the event of a conflict or inconsistency between the Digital Data or other electronic file and the hard copy originals of the Project documents, the hard copy originals shall govern.
  - viii. **Errors in Digital Conversion.** Automated conversion of information and data from the system and format used by Balzer to an alternate system or format may result in the introduction of inaccuracies, errors, and anomalies. If Balzer provides any Digital Data to the Client, and if the Client (or someone acting on Client’s behalf) converts such data using its own system and format, Client shall assume all risks associated therewith.
  - ix. **Indemnification for Digital Errors.** The Client, to the extent permitted by law, shall indemnify and hold harmless Balzer and its Design Professionals from all costs, losses, expenses, damages, obligations, deficiencies, or liabilities (including costs of investigation, interest, penalties, reasonable attorney’s fees), related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the

Client's use of the Instruments of Service or Digital Data under this Section 9.

- 10. Confidentiality.** The parties and their attorneys shall keep the specific terms, conditions, and covenants of the Agreement confidential except
- a. where mutually agreed to in writing by the parties;
  - b. where necessary to share such information with the parties' accountants or attorneys;
  - c. where necessary to share such information to perform services solely and exclusively for the Project;
  - d. where disclosure to a governmental entity is required; or
  - e. where disclosure is ordered by a court of competent jurisdiction.

The parties and their attorneys shall not communicate with anyone associated with any media or publication entities concerning the terms of the Agreement. This confidentiality provision is a material term of the Agreement and its violation shall constitute a breach thereof.

- 11. Government Agencies: Liability; Permits.** Balzer shall not be liable for damages resulting from the actions or inactions of governmental agencies. Such actions include: permit processing; environmental impact reports; dedications; general plans and amendments; zoning matters; annexations or consolidations; use or conditional use permits; project or plan approvals; and, building permits. Client shall maintain in good standing all governmental approvals or permits and shall timely apply for any necessary extensions thereof.

- 12. Additional Liability Limitations.** Except as required by mandatory law, under no circumstances is Balzer or its Design Professionals liable for any of the following even if informed of their possibility:
- a. Loss of, or damage to, the Client's records, documents, data (Digital or otherwise), or any other proprietary information.
  - b. Indirect, consequential or incidental damages and losses sustained by the Client.
  - c. The Client's lost profits, business, revenue, goodwill, or anticipated savings.

- 13. Code Compliance.** Balzer shall use usual and customary professional care consistent with that provided by professionals practicing in the same or similar locality under the same or similar circumstances in its efforts to comply with all applicable codes, laws, regulations, and polices of regulatory agencies in force as of the effective date of the Agreement. The Client shall not hold Balzer responsible or liable for any damages resulting from conflicting or different interpretations of such codes, laws, regulations, and polices of regulatory agencies by different officials. The Client shall not hold Balzer responsible or liable for any damages resulting from subsequent changes to any codes, laws, regulations, and polices of regulatory agencies after the effective date of the Agreement.

- 14. Client Bankruptcy.** Balzer may immediately and without notice suspend the performance of any and all of its obligations under the Agreement if the Client files a voluntary petition seeking relief under the United States Bankruptcy Code or if there is an involuntary petition filed against the Client in the United States

Bankruptcy Court which is not dismissed within fifteen days of its filing. Any such suspension of services will continue until the Agreement has been fully and properly assumed in accordance with the United States Bankruptcy Code and in compliance with the final order or judgment issued by the United States Bankruptcy Court. If the Client is unable to perform its obligations under the Agreement within 90 days, Balzer may rightfully terminate the Agreement. In the event of termination under this Section 14, the Client shall pay Balzer for all services performed prior to termination, together with Reimbursable Expenses then due as well as all Termination Expenses.

- 15. Property Liens.** The Agreement will not alter, affect, or waive any Design Professional's lien, mechanic's lien, or stop-notice right that Balzer may have for the performance of any service for the Project. The Client shall provide Balzer the present name and address of the record owner of the property on which the Project is to be located. The Client shall provide Balzer with the name and address of any and all lenders who may loan money on the Project and who are entitled to receive a preliminary lien notice.
- 16. Third Party Indemnification.** If payment for Balzer's services is to be made on behalf of the Client by a third party, Balzer shall not indemnify that third party lender, either as a condition to Balzer's receiving payment for its services or for any other reason.
- 17. Change in Fee Schedule.** If Balzer's Fee Schedule changes due to any increase of costs (including granting of wage increases, employee benefits, or increase in cost of living) during the Term of the Agreement, Balzer shall apply a percentage increase to all remaining Project Fees and other charges to reflect those increased costs.
- 18. Hazardous Materials.** Balzer shall have no responsibility for the detection or removal of any hazardous materials or substances found on-site, including but not limited to asbestos, polychlorinated biphenyl, petroleum, hazardous waste, or radioactive materials from which arises the risk of foreseeable bodily injury or death ("**Hazardous Materials**"). Balzer is not and shall not function as an "arranger," "operator," "generator," or "transporter" of Hazardous Materials as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 94 Stat. 2767 (codified as amended at 42 U.S.C. §9601 et seq.).

  - a. Suspension Due to Hazardous Materials.** If Balzer encounters any Hazardous Materials on the job site, or should it in any other way learn that Hazardous Materials are present or may be present on the jobsite, an adjacent site, or a nearby area such that Balzer's services may be affected, Balzer may suspend work on the Project until the Client retains a qualified contractor to abate or remove the Hazardous Materials and warrant to Balzer that the job site is free from any further Hazardous Materials.
  - b. Hazardous Materials Claims.** Should Balzer agree to provide detection or removal services related to Hazardous Materials on or near the job site, Client shall bring no cause of action against Balzer or its Design Professionals if such claim or cause of action in any way would involve,

include, or implicate Balzer's services for the investigation, detection, abatement, replacement, use, specification, or removal of products, materials, or processes containing Hazardous Materials.

- c. **Indemnification Against Third Party Hazardous Materials Claims.** The Client, to the extent permitted by law, shall indemnify and hold harmless Balzer and its Design Professionals from all costs, losses, expenses, damages, obligations, deficiencies, or liabilities (including costs of investigation, interest, penalties, reasonable attorney's fees) related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from a Hazardous Material-related claim under this Section 18.

**19. Termination.**

- a. **Non-Payment.** If the Client fails to make payments to Balzer in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Balzer's discretion, cause for suspension of performance of services under this Agreement. If Balzer elects to suspend services, Balzer shall give seven days' written notice to the Client before suspending services. In the event of a suspension of services, Balzer will have no liability to the Client for delay or damage caused the Client because of such suspension of services. Before resuming services, the Client shall pay Balzer all sums due prior to suspension in addition to any expenses incurred in the interruption and resumption of Balzer's services ("**Remobilization Costs**").
- b. **Failure to Perform.** Either party may terminate this Agreement after giving seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement.
- c. **Abandonment, Suspension, and Remobilization.** If the Client abandons or suspends the project for more than 30 days for reasons other than the fault of Balzer, Balzer may terminate this Agreement after giving seven days' written notice. In that event, the Client will be billed and shall pay in accordance with Section 19(d). If the Client and Balzer agree to restart the Project, the Client shall pay Remobilization Costs in addition to the original Project Fee.
- d. **Termination Compensation.** In the event of termination not the fault of Balzer, the Client shall pay Balzer for all services performed prior to termination, together with Reimbursable Expenses then due as well as all expenses in addition to compensation for Balzer's services including expenses directly attributable to termination for which Balzer is not otherwise compensated, plus an amount for Balzer's anticipated profit on the value of the services not performed (including cost of terminating consultant's contracts, reducing staff, and terminating leases on office space or equipment) ("**Termination Expenses**").

- 20. Amendments and Modifications.** The parties may amend or modify this Agreement only by a written agreement signed by the parties that states it is an amendment to this Agreement.
- 21. Assignment.** Neither party may assign its rights or delegate any performance under the Agreement, except with the prior written consent of the other party. Any purported assignment or delegation in violation of this Section is void.
- 22. Successors and Assigns.** The Agreement binds and benefits the parties and their respective permitted successors and assigns.
- 23. Force Majeure.** Neither party shall be liable for any failure of or delay in the performance of the Agreement for the period that such failure or delay is due to causes beyond its reasonable control and without its negligence, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders, or any other force majeure event (“**Force Majeure Event**”). If a Force Majeure Event occurs,
- a. the party with knowledge of such event shall advise the other party of the event’s existence as soon as possible after its occurrence; and
  - b. Balzer’s obligation to perform is suspended until the Force Majeure Event ends.
- 24. Notice.** The Client shall give any notice or communication pursuant to the Agreement in writing by personal delivery, overnight courier, or certified mail at the address specified below or such other address as may be provided pursuant to this Section:

a. **Address:**

Mr. James W. McAden, President  
Balzer and Associates, Inc.  
1208 Corporate Circle  
Roanoke, VA 24018

A notice provided under the Agreement is effective only if the Client has complied with this Section and if Balzer has received the notice.

- 25. Governing Law.** All matters arising under or relating to the Agreement are to be governed by the laws of the state of Virginia without regard to its conflicts of laws principles.
- 26. Jurisdiction and Venue.** Any dispute arising under or in connection with the Agreement or related to any matter that is the subject of the Agreement shall be subject to the exclusive jurisdiction of the state and/or federal courts presiding over that area of Virginia in which the Balzer office responsible for generating and executing the Agreement is located. If the Client unsuccessfully challenges the enforceability of this forum selection, the Client shall reimburse Balzer for its attorney's fees, and Balzer shall be awarded its attorneys' fees.
- 27. Severability.** If any provision of the Agreement is illegal or unenforceable that provision is severed from the Agreement and the remaining provisions shall remain in full force and effect (insofar as it remains a workable instrument to accomplish the intent of the parties).